(3)

No. 98-900

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1998

ROBERT W. COLLIN
Petitioner,

v.

UNIVERSITY OF VIRGINIA, William Lucy; David Phillips; A. Bruce Dotson; Richard Collins; Daphne Spain; Timothy Beatley; and Harry Porter,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY TO RESPONDENTS BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Robin Adrienne Morris
120 Elkay Drive
Eugene, OR 97404
(541)607-1072
Counsel of Record

Dated: December 31, 1998

13 pp

QUESTIONS PRESENTED

I. Can a state university professor be blacklisted and employment terminated for advocating for racial equality under the law?

II. Can a paid employee of the Commonwealth of Virginia adjudicate a race discrimination case against his employer?

TABLE OF CONTENTS

Page

Questions Presented..... i

Table of Authorities..... ii

Reasons to Grant the Writ..... 1

Conclusion..... 9

TABLE OF AUTHORITIES

	Page
CASES	
Adler v. Board of Education 342 US 485 (1952)(Justice Douglas dissenting).....	2
Givhan v. Western Line Consolidated School District, 439 U.S. 410 (1979).....	5
Jurensen v. Fairfax County, 745 F.2d 868, 880 (4th Cir. 1984).....	8
Keyishian v. Board of Regents, 385 U.S. 589 (1967).....	4
Pickering v. Bd. of Education, 391 U.S. 563 (1968).....	4
Police Dept. of Chicago v. Mosely, 408 U.S. 92, 96 (1972).....	5
Rosenberger v. University of Virginia, 115 S.Ct. 2510 (1995)..	5,6
Sweezy v. New Hampshire, 354 U.S. 234 (1957).....	3
STATUTES	
1964 Civil Rights Act of 1964 Pub. L. No. 88-352, 78 Stat. 245 (1964).....	1,7
42 U.S.C s 2000e-1(a)(1988).....	1
UNITED STATES CONSTITUTION	
First Amendment.....	3,4 5,7
Fourteenth Amendment.....	4

REASONS TO GRANT THE WRIT

This Case Presents Important Judicial Issues of National Significance.

With the advent of the 1964 Civil Rights Act, and subsequent amendments to include Colleges and Universities, Racial diversity in publicly funded higher education is a fact of life. Faculty, students, and administrators all over the United States, including the Commonwealth of Virginia, must confront issues associated with racial diversity, such as affirmative action in admissions, ethnic studies, and employment. Academia should be an ideal forum for leadership on these issues, but job blackmail and retaliation preclude free and full discussions of racism on campuses across the nation. By ending the promising career for a prominent young scholar for his racial advocacy, the *Respondents* have set an example others will heed. Fear of ending a career will silence those academics without tenure, and will encourage institutions with serious racial problems to blacklist their critics.

Furthermore, the intentional

blacklisting of a nationally recognized scholar for involvement in constitutionally protected activities only serves to ultimately increase racial conflict in American society. Issues of race are unavoidably important in both the administration of higher education, and in the content of a Professor's class. Academic freedom is to protect scholarly endeavors, but on issues of race have not because of the lack of clear judicial direction. This lack of direction will not stem the flow of cases like the one at bar because of the increasingly diverse nature of US society and higher education. The resolution of these issues is difficult. The conflict and lack of judicial guidance on the substance exacerbates these increasing and unavoidable issues. The procedural arguments raised by *Respondent* do not address these nationally significant issues.

Racial equality and academic freedom are two of the highest held ideals in law and society. Academic freedom began its U.S. legal history in 1952. The dissent by Justice Douglas in the *Adler v. Board of Education* case was the first time academic freedom was expressly mentioned by the US Supreme Court. 342 US 485

(1952)(Justice Douglas dissenting). Justice Douglas used the phrase "academic freedom" three times, all in connection to the First Amendment. It was in this case that academic freedom was expressly tied to the First Amendment in an academic context. This case also set the tone for subsequent jurisprudence in this area. In the case of *Sweezy v. New Hampshire,* 354 U.S. 234 (1957), the Supreme Court overturned a contempt conviction of teacher for refusal to answer questions about a classroom lecture. Here again the Court addressed the underpinnings of academic freedom, this time in language from Chief Justice Warren.

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of the Nation...Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our

> civilization will stagnate and die. *Id.* at 250.

In *Keyishian v. Board of Regents,* 385 U.S. 589 (1967), the Supreme Court held that:

> ...public employment, including academic employment, may [not] be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action. *Id.*

This case marked the first time the principle of academic freedom was distinctly recognized by a majority of the Supreme Court. The majority stated:

> Our nation is deeply committed to safeguarding academic freedom which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom....The classroom is peculiarly the market place of ideas. *Id.* at 603.

This protection is applicable to states through the concept that free speech is a liberty protected against state infringement by the Due Process Clause of the Fourteenth Amendment. *Pickering v. Bd. of Education,* 391 U.S.

563 (1968). Protection against retaliation for the exercise of free speech extends to private communications between the employee and the employer on issues of genuine public concern, such as the employer's treatment of women and minorities. *Givhan v. Western Line Consolidated School District*, 439 U.S. 410 (1979).

As noted recently by this Court when deciding another first amendment case against the *Respondent*:

> It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. (citing *Police Dept. of Chicago v. Mosely*, 408 U.S. 92, 96 (1972) *Rosenberger v. University of Virginia*, 115 S.Ct. 2510 (1995).

This Court went on to note that:

> ...when the government targets not the subject matter but the particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.... Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction. ...Viewpoint

> discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations. *Id.*

This court also discussed the concept of freedom of expression specifically at the University of Virginia, within the same general timeframe of the case at bar. In discussing the danger to liberty interests at Universities this Court stated:

> The second, and corollary danger is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition. *Rosenberger v. University of Virginia,* 115 S.Ct. 2510, 2519 (1995).

Racism generally is undeniably a matter of public concern. The inclusion of African Americans in the decisionmaking process of University of Virginia expansion into West Main Street is also undeniably a matter of public concern in Charlottesville, Virginia.

Petitioner engaged in speech on a matter of public concern - in his community service, local, state, and national legislative testimony on fair housing, his studies of race and housing in Charlottesville and Albemarle, his publications on environmental racism, and most importantly in his classroom. If an individual Professor is denied equal employment opportunities because of his position on issues of race, at a state university, then the Congressional intent of the 1964 Civil Rights Act is thwarted, and our society loses the benefit of academic freedom in an increasingly diverse world. If *Petitioner* cannot get a day in court based on judicial proceedings which were tainted by bias in the discovery stages, then the fundamental underpinnings of the U.S. justice system are jeopardized.[1] The Constitution requires judicial vigilance whenever governmental action limits or impedes the exercise of First Amendment freedoms. This case involves these basic freedoms - freedom of speech on matters

[1]. Contrary to *Respondent's* claim, *petitioner* did not agree to the Magistrate as Judge. When discovery at the law school was thwarted, and all case files secretly sealed, *petitioner* wrote directly to the Magistrate.

of political and public concern. And it arises in a context compelling the greatest latitude for the free expression of ideas - a university school classroom at a public university. *Jurensen v. Fairfax County*, 745 F.2d 868, 880 (4th Cir. 1984)(State inhibition of academic freedom is strongly disfavored) Racial equality in employment and academic freedom are very important questions for the nation's future, and for this case. If the Court allows this decision to stand, it will limit intellectual discourse and leadership on Race, increase judicial confusion in the lower courts, and lose a rare opportunity to begin healing racial strife.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

Robin Adrienne Morris
120 Elkay Drive
Eugene, OR 97404
(541)607-1072
Counsel for Petitioner